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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

M.F.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D075703

(San Diego County
Super. Ct. No. NJ15343)

PROCEEDINGS for extraordinary relief after reference to a Welfare and
Institutions Code section 366.26 hearing. Michael Imhoff, Judge. Petition denied.

Judith Klein and Kandy Koliwer for Petitioner.

No appearance by Respondent.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County
Counsel, and Kristen M. Ojeil, Deputy County Counsel, for Real Party in Interest.

M.F. (Mother) seeks review of a juvenile court order terminating reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing for her minor daughter E.F. Mother contends the San Diego County Health and Human Services Agency (the Agency) failed to provide reasonable services between the 12- and 18-month permanency review hearings before the court terminated reunification services and set the matter for a selection and implementation hearing. We reject Mother's argument and deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Both parties agree the sole issue in this writ proceeding arises from the events that occurred between the 12- and 18-month permanency review hearings. On May 28, 2019, this court filed an opinion in an appeal arising from Mother's challenge to the juvenile court's orders following a section 387 disposition hearing and order subsequent to the 12-month permanency review hearing. (*In re E.F.* (May 28, 2019, D074919) [nonpub. opn.].) Accordingly, both parties rely on the factual background provided in that recent opinion, which we also rely on to set forth the relevant general background.

E.F. was born in 2009 and removed from her biological parent's custody due to domestic violence between her parents. She was then adopted by her current parents, Mother and A.F. (Father) in 2013. Father subsequently passed away in January 2019 during the pendency of these proceedings.

¹ All subsequent statutory references are to the Welfare and Institutions Code.

In August 2017, the Agency petitioned the juvenile court under section 300, subdivision (c), on behalf of E.F. The petition alleged that E.F. had an emotional disorder and was suffering, or was at substantial risk of suffering, serious emotional damage as a result of Mother's conduct. In the year preceding the filing of the petition, the Agency had received 16 child abuse reports regarding Mother's ability to safely care for E.F. E.F.'s pediatrician stated that most of E.F.'s problems stemmed from Mother. At E.F.'s detention hearing, the court found that the Agency had made a prima facie showing under section 300, subdivision (c), and ordered that E.F. be detained outside of Mother's home.

In March 2018, E.F. returned to her family home during a trial visit, but she was removed again in July 2018 due to a mental health relapse and the Agency's belief that the family home had not been effective in protecting and rehabilitating E.F. During this time period, Mother was participating in services but not showing any insight or any meaningful change in her behavior toward E.F. An Agency psychologist recommended that Mother submit to a psychological evaluation to determine whether there was anything that was preventing Mother from making the necessary behavioral changes to allow for reunification.

Between the 6- and 12-month permanency review hearings, Mother submitted to a psychological evaluation by a private provider. For apparently the first time, Mother told the psychologist that she suffered a traumatic brain injury during a car accident when she was young. The psychologist opined that the traumatic brain injury could affect Mother's emotional functioning.

In November 2018, the court held a 12-month permanency review hearing and found by clear and convincing evidence that returning E.F. to her parents' care would be detrimental to her and that reasonable reunification services had been provided to both parents. The court modified the existing case plan to allow for a neuropsychological evaluation for Mother and to grant the social worker discretion to arrange Dialectical Behavior Therapy for Mother.

As already discussed, Mother appealed both the juvenile court's order following the 12-month permanency review hearing and an earlier order following a section 387 disposition hearing. This court affirmed both orders, holding in part that the juvenile court's finding that reasonable services had been provided was supported by substantial evidence. (*In re E.F.*, *supra*, at pp. 27-31.)

In late January 2019, the Agency received Mother's neuropsychological evaluation and sent a copy to all parties and the juvenile court. The evaluator concluded that Mother "demonstrated below average scores in the areas of executive functioning, processing speed, visual cognition, language, and memory." He explained that "[t]he pattern of her neuropsychological deficits observed during this evaluation is also internally consistent with traumatic brain injury given her deficits in executive functioning, processing speed and new learning. [¶] [Mother] demonstrated significant neurocognitive deficits that are likely related to her significant traumatic brain injury and these deficits are likely permanent given the time that has elapsed since her injury."

In response to specific questions posed by the Agency regarding potential services, the evaluator opined that although Mother's "significant impairment in several areas of

cognition . . . do not render her completely incapable of utilizing and benefiting from services, they certainly do complicate the picture." The evaluator noted that despite participating in services in the past, Mother reverted to her previous parenting practices. The evaluator concluded that Mother "appears to have exhausted the treatments available to her in that she went through several treatments but still manifested the same behaviors once [E.F.] was returned to the home on a trial basis in early 2018. Although it is possible that [Mother] could benefit from cognitive rehabilitation focused on her neurocognitive deficits, it is unlikely that such treatment would significantly improve her daily cognitive functioning One thing that I would like to add in regard to her successfully completing several treatments in the past and not being able to implement what she learned in those treatments is that it is not unusual for someone with executive dysfunction to be able to state how one should behave or act appropriately in a given situation, but then to go and do exactly the opposite in that same situation. I feel this is the case with [Mother]."

Relying on the conclusions of the neuropsychological evaluation, the Agency recommended no further reunification services be provided and that all services be terminated. At a contested 18-month permanency review hearing in April 2019, Mother called several witnesses, including her therapist that she began seeing in January 2019. The therapist opined that Mother would continue to benefit from services and "perhaps make improvement."

The court made detailed findings at the conclusion of testimony. It noted that even after Mother completed her case plan and E.F. was placed back in the family home,

"that placement was not successful." The court concluded that the neuropsychological evaluation allowed the situation to come "into clearer focus" by showing "what the primary catalyst was or explanation for this frustrating pattern of [E.F.] having difficulty while in the care of Mother." Relying on that evaluation, which the court found to be uncontroverted and competently prepared, the court found that "there is a degree of impairment with the mother because of her traumatic brain injury, that given the unique behavioral issues and psychological and emotional issues with [E.F.] that the mother is just simply not capable of understanding, gaining insight to or implementing appropriate strategies to give [E.F.] an opportunity to maximize her potential given what she's gone through." The court concluded that Mother's impairment was so significant that there were no identified services that would assist in reunification and accordingly found by "clear and [convincing] evidence that reasonable services have been offered and provided," but that Mother had not made significant progress in her case plan and declined to continue reunification services. The court also found that returning E.F. to Mother's care would be detrimental, terminated reunification services, and set the matter for a selection and implementation hearing.

Mother petitioned for review of the juvenile court's order and requested a stay of the section 366.26 hearing. (Cal. Rules of Court, rule 8.452.) This court issued an order to show cause. The Agency responded to Mother's petition, but E.F. did not. The parties waived oral argument.

DISCUSSION

Mother's sole contention in her writ petition is that the Agency failed to provide her with reasonable services in response to the neuropsychological evaluation following the 12-month permanency review hearing.²

I

"The purpose of the California dependency system is to protect children from harm and preserve families when safe for the child. (§ 300.2.)" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "The focus during the reunification period is to preserve the family whenever possible. [Citation.] Until services are terminated, family reunification is the goal and the parent is entitled to every presumption in favor of returning the child to parental custody. (§§ 366.21, 366.22; [citation].)" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424 (*Tracy J.*)). Reasonable reunification services during the reunification period are statutorily required, though there is "no constitutional 'entitlement' to these services." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 475.)

Family reunification services are also subject to strict time limitations. " '[T]o prevent children from spending their lives in the uncertainty of foster care, there must be a limitation on the length of time a child has to wait for a parent to become adequate. [Citations.] To avoid unnecessary delays in the process the Legislature has directed the

² In its response to the writ petition, the Agency contends that Mother's writ petition fails to discuss the applicable standard of review, fails to discuss all of the relevant evidence, and fails to provide citations to the record. Although these deficiencies are noted, we will consider its merits. (Rules 8.204(e)(2)(C) [court can disregard noncompliance in briefs], 8.452(h)(1) ["[a]bsent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion"].)

juvenile court to 'give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.' (§ 352, subd. (a).)" (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) "Under the current dependency scheme, except in limited circumstances, a parent is entitled to 12 months of reunification services, with a possibility of 6 additional months, when a child is removed from a parent's custody. (§ 361.5.) The juvenile court must review the case at least once every six months. (§ 366.)" (*Ibid.*)

"At each review hearing, if the child is not returned to the custody of his or her parent, the juvenile court is required to determine whether reasonable services . . . designed to aid the parent in overcoming the problems that led to the initial removal and the continued custody of the child have been offered or provided to the parent . . . (§ 366.21, subds. (e), (f).)" (*In re J.P.* (2014) 229 Cal.App.4th 108, 121.) Only in rare circumstances may the juvenile court continue the 18-month review hearing or order additional reunification services—for example, if the parents have been completely denied adequate reunification services. (See *Tracy J.*, *supra*, 202 Cal.App.4th at pp. 1426-1428 [agency provided mother no services to address her physical disabilities and child's asthma, unnecessarily limited visitation, and did not inform parents of child's medical appointments]; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1000, 1017 [no reasonable services ever provided to father incarcerated all but one month of reunification period].)

If reasonable services have been provided, "section 366.22, subdivision (a) requires the juvenile court at the 18-month review hearing to return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.)

II

As noted, Mother challenges the juvenile court's finding she was offered reasonable reunification services and appears to suggest additional services should have been provided and continued before the court terminated reunification services. She does not address the question of whether the court was required to continue reunification services beyond the 18-month hearing due to exceptional circumstances. Regardless, we reject her contention that the Agency failed to provide reasonable reunification services between the 12- and 18-month review hearings and that the court erred in finding additional services would not be beneficial to address the problems that necessitated E.F.'s removal from Mother's care.

We review a reasonable services finding for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) "In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545

(*Misako R.*); see also *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598 (*Katie V.*.)

In its determination, the juvenile court considers the appropriateness of services offered, the extent to which the agency facilitated utilization of those services, and the extent to which the parent availed him or herself of the services provided. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) Reunification services "should be tailored to the particular needs of the family." (*Tracy J.*, *supra*, 202 Cal.App.4th at p. 1425.) The adequacy of the plan and the Agency's efforts must be judged according to the circumstances of the particular case. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1451.)

We do not find merit in Mother's assertion that the reunification services offered to her were insufficient following the neuropsychological evaluation. Viewing the evidence in the light most favorable to the court's finding, the juvenile court could reasonably conclude that the results of the neuropsychological evaluation, combined with Mother's past failure to meaningfully respond to reunification interventions, demonstrated that no further services would be likely to result in the return of E.F. to Mother's care.

As the juvenile court explained, "there is a degree of impairment with the mother because of her traumatic brain injury, that given the unique behavioral issues and psychological and emotional issues with [E.F.] that the mother is just simply not capable of understanding, gaining insight to or implementing appropriate strategies to give [E.F.]

an opportunity to maximize her potential given what she's gone through." This conclusion was supported by the evaluator's opinion that Mother "appears to have exhausted the treatments available to her in that she went through several treatments but still manifested the same behaviors once [E.F.] was returned to the home on a trial basis in early 2018. Although it is possible that [Mother] could benefit from cognitive rehabilitation focused on her neurocognitive deficits, it is unlikely that such treatment would significantly improve her daily cognitive functioning."

Mother argues that her own therapist testified that Mother would continue to benefit from services and "perhaps make improvement." As noted, the evaluator also noted that Mother "could benefit" from additional therapy. The reasonableness of reunification services, however, is not judged based on whether a parent may receive some tangential benefit from the services, but rather whether these additional services would be geared toward reunification. (See, e.g., *San Joaquin Human Services Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 224; see also *Katie V.*, *supra*, 130 Cal.App.4th at p. 598 ["[T]he focus of reunification services is to remedy those problems which led to the removal of the children."].) Although Mother may benefit in a general sense from additional therapy, the juvenile court reasonably relied on the neuropsychological evaluation to find that no additional services were reasonably likely to allow for the reunification of Mother and E.F. The evaluator concluded that any additional services would likely mirror the earlier services received by Mother which failed to result in the necessary change in behavior and parenting techniques to remedy the problems which led to E.F.'s removal.

Reviewing the record as a whole, we conclude that substantial evidence supports the juvenile court's finding that reasonable reunification services were provided to Mother under the circumstances and, based on the conclusions of the neuropsychological evaluation, no additional services were likely to result in a different outcome that would result in the reunification of Mother and E.F.

DISPOSITION

The petition and request for stay are denied.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

O'ROURKE, J.